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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re EMILY G., a Person Coming
Under the Juvenile Court Law.

B294554

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No.
18CCJP06366A

Plaintiff and Respondent,

v.

ERIKA U.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Anthony A. Trendacosta, Judge. Affirmed.

Matthew Joseph Hardy III, under appointment by the
Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Veronica Randazzo, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Erika U. (mother) challenges the juvenile court's jurisdiction finding that she placed her 23-month-old daughter, Emily G., at risk of serious physical harm when mother and mother's boyfriend drove Emily in a car containing a loaded firearm, ammunition, and drugs (Welf. & Inst. Code,¹ § 300, subd. (b)). Mother does not challenge the court's disposition order removing Emily from mother's custody and placing the child with her father, Jesus G. (father). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 30, 2018, mother was driving through Carson with her boyfriend, David S., a member of "Victoria Park 13," a local gang. Emily was sitting in the backseat of mother's car. The police stopped mother's car for expired registration and a malfunctioning license-plate light. As mother pulled her car to the curb, David jumped out and threw a loaded gun over the wall of a nearby house before climbing over that wall and evading the police.

As one of the officers approached the front driver's side window of mother's car, he "smelled a strong odor of freshly cut marijuana emitting from inside the vehicle." When that officer contacted mother, she stated, "Wait, where is he going? Why is he running[?]" Mother then acted like she didn't know the man who jumped from her car. Mother claimed he was a stranger who got in her car while she was stopped at a red light at the intersection of Wall Street and Victoria Street shortly before the police pulled

¹ All undesignated statutory references are to the Welfare and Institutions Code.

her over. Mother stated she complied with all of the man's demands because he was carrying a gun.

Mother gave the police permission to search her car. The police found a black backpack in the front passenger seat. The backpack contained David's cell phone and driver's license, several rounds of ammunition, more than 90 grams of methamphetamine, a mason jar filled with marijuana, and five "used glass narcotics smoking pipes." The police also found a gym bag behind the driver's seat containing mother's expired driver's license and a piece of paper containing the names, phone numbers, and addresses of active gang members, including David. Mother later admitted the gym bag and the list of gang members' names, numbers, and addresses belonged to her, but she claimed the backpack found in the front passenger seat belonged to the man who jumped in her car.

The police showed mother David's driver's license and asked her if he was the person who fled from her car. Mother confirmed that she knew David because she used to live in the "area" for 15 years and "knows all of the 'gangsters.'" She claimed she did not know, however, if David was the person who had fled from her car.

One of the officers who was watching mother's car before it was stopped later confirmed that no one got into the car at the intersection of Wall Street and Victoria Street. The police also confirmed that David was the person who jumped out of mother's car.²

The police arrested mother "[b]ased on the amount of suspected narcotics, the narcotics paraphernalia, the

² David was later arrested.

ammunition, the flaws and inconsistenc[ies] in her statements and change of demeanor, the recovery of a loaded firearm from [David] who fled the vehicle and all within close proximity of [mother's] 23 month old daughter.” Emily was detained and mother was charged with child endangerment, transportation of a controlled substance, and possession of drug paraphernalia.

The Department of Children and Family Services (Department) interviewed mother on the same day she was arrested. Mother lives in Pomona with Emily and the child's maternal grandmother. Mother is enrolled in school and works for an engineering company. She was visiting a friend in Carson on the day she was arrested. Mother denied knowing why she had been arrested, and she claimed she did not know the man who jumped out of her car after the police initiated the traffic stop. Mother was released from custody a few days after she was arrested, and all charges against her were dropped.

On October 3, 2018, the Department filed a dependency petition on Emily's behalf under section 300, subdivision (b). As later sustained by the court, the petition alleged that mother created a “detrimental and endangering” situation when she drove Emily in a car containing a loaded gun, ammunition, methamphetamine, and marijuana. On October 4, 2018, the court ordered Emily detained from mother's custody and granted mother six hours of monitored visitation per week.

About a week after the detention hearing, the court found father was a non-offending parent and released Emily to his custody. Father confirmed that mother was dating David. Mother often brings David with her when she drops Emily off for visits with father. David has physically threatened father, sometimes sending him messages “wanting to ‘fight.’ ” Father described

David as having “long hair” and a “pony tail,” which matched the description of the man the police saw flee from mother’s car.

The Department interviewed mother again in the middle of October 2018. Mother continued to deny any wrongdoing during the September 30, 2018 incident. Although mother admitted she was dating David, she claimed he was not the man who was in her car before she was arrested. Mother also disputed the police report that stated David’s phone and driver’s license were inside the backpack found in the front passenger compartment of mother’s car. According to mother, David’s phone and license were actually found under the front passenger seat because he had forgotten them the last time he was inside her car.

Between mid-October and mid-November 2018, mother submitted two clean drug test samples and missed three scheduled drug tests. Mother told the Department she had missed some tests because she was confused about the testing schedule.

On December 10, 2018, the court held a jurisdiction and disposition hearing. Mother testified. She continued to deny that she knew the man who fled from her car shortly before she was arrested. Mother also denied that the police found David’s driver’s license inside the backpack that was in the front passenger compartment of mother’s car, and she claimed she never asked one of the police officers from the traffic stop why David was running from the car. Mother admitted she was dating David, who was in custody at the time of the jurisdiction hearing.

The court sustained the petition’s sole allegation, finding mother “has some credibility issues.” The court declared Emily a dependent of the court, ordered her removed from mother’s custody, and placed her with father. The court ordered the

Department to provide mother enhancement services, including parenting classes and individual counseling. The court awarded mother six hours of monitored visitation a week.

Mother timely appealed from the court's disposition order.

DISCUSSION

Mother challenges the juvenile court's jurisdiction finding. She contends insufficient evidence supports the conclusion that Emily faced a current risk of substantial physical harm at the time of the jurisdiction hearing. As we explain, substantial evidence supports the court's finding.

We review jurisdiction findings for substantial evidence. (*In re D.C.* (2015) 243 Cal.App.4th 41, 55.) We will affirm the findings if they are supported by evidence that is reasonable, credible, and of solid value. (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) "We do not evaluate the credibility of witnesses, attempt to resolve conflicts in the evidence or determine the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is other evidence supporting a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]" (*Ibid.*)

At the jurisdiction stage of a dependency proceeding, the Department must prove by a preponderance of the evidence that the child is a dependent of the court as described by section 300. (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992 (*Yolanda L.*)) A court may exercise jurisdiction over a child under section 300, subdivision (b)(1), if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm

or illness, as a result of the failure or inability of his or her parent ... to adequately supervise or protect the child” Section 300, subdivision (b)(1) does not require the department to prove, by a preponderance of the evidence, neglectful conduct by a parent. (*In re R.T.* (2017) 3 Cal.5th 622, 624, 629 (*R.T.*) [provision authorizes dependency jurisdiction without finding that parent is at fault or blameworthy for failure or inability to supervise or protect child].)

“The juvenile court need not wait until a child is seriously injured to assume jurisdiction if there is evidence that the child is at risk of future harm from the parent’s negligent conduct. [Citation.]” (*Yolanda L., supra*, 7 Cal.App.5th at p. 993.) To show the child faces a risk of harm at the time of the jurisdiction hearing, there “must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 136, overruled on another ground in *R.T., supra*, 3 Cal.5th 622.) In determining whether the parent’s negligent or harmful conduct is likely to recur in the future, courts may consider evidence of the parent’s past conduct. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) A parent’s denial of wrongdoing or failure to recognize the negative impact of her conduct is also a relevant consideration in the court’s determination of risk under section 300. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 735, fn. 4; see also *In re A.F.* (2016) 3 Cal.App.5th 283, 293 [“ ‘[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.’ ”].)

The court’s jurisdiction finding under section 300, subdivision (b), is supported by substantial evidence. When mother was arrested, Emily was sitting in the backseat of

mother's car. David had just fled from the car carrying a loaded gun. The police found ammunition, more than 90 grams of methamphetamine, and a canister of marijuana in the front seat of mother's car. Mother admitted that the list of the names, numbers, and addresses of active gang members found inside her car belonged to her. Based on this evidence, the court reasonably could infer that mother and David were preparing to sell or deliver drugs to the people on mother's list while Emily was in the car. And, because David was carrying a loaded firearm with extra ammunition stored in the car, the court also could have inferred that David and mother anticipated encountering a violent or otherwise dangerous situation while Emily was present. By engaging in such conduct with Emily in the car, mother placed the child at a substantial risk of harm.

Relying on *In re D.L.* (2018) 22 Cal.App.5th 1142 (*D.L.*), mother contends there is no evidence Emily faced a current risk of harm because the underlying incident was isolated and occurred several months before the jurisdiction hearing. In *D.L.*, the juvenile court sustained a jurisdiction finding against a child's mother and father under section 300, subdivision (b), after the police recovered a loaded firearm that the child's father kept in the child's bedroom, in an area where the child could access it. (*D.L.*, at pp. 1144–1146.) The mother had never seen the father possess a gun, and she was unaware that he had kept the gun in the child's bedroom. (*Ibid.*) Before the jurisdiction hearing, the mother advised the Department that she was no longer in contact with the father, and that he was not welcome in her home. (*Id.* at p. 1145.) The father told the Department that the mother did not know about the gun, and he promised that he would either no

longer have a gun or keep it locked in a safe where the child could not access it. (*Ibid.*)

The Court of Appeal reversed the jurisdiction finding as to the child's mother; the father did not appeal. (*D.L.*, *supra*, 22 Cal.App.5th at pp. 1145–1147.) The reviewing court explained that any future risk of harm to the child was speculative because: (1) the father no longer lived with the family; (2) the mother told the Department that the father was no longer welcome in her home; and (3) the father had ensured that the child would no longer have access to a gun. (*Id.* at p. 1147.) In short, the child in *D.L.* did not face a future risk of harm because the parents accepted responsibility for their conduct and took steps to prevent similar incidents that could endanger the child from occurring in the future.

Mother's reliance on *D.L.* is misplaced. Unlike the parents in *D.L.*, mother repeatedly lied about the circumstances leading to Emily's detention and refused to acknowledge that she had done anything wrong despite overwhelming evidence to the contrary. For example, mother repeatedly denied that David had been in her car when the police initiated the traffic stop, even though the Department presented the following evidence contradicting mother's account: David's driver's license and cell phone were found in the backpack recovered from the front passenger compartment of mother's car; father's description of David matched the police's description of the man who fled from mother's car; and the police confirmed that David was the person who fled from mother's car. Mother's repeated denial of wrongdoing and refusal to take responsibility for her conduct that led to Emily's detention amply support a finding that the conduct that placed Emily at a substantial risk of harm was likely to

recur. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197
[“One cannot correct a problem one fails to acknowledge.”].)

DISPOSITION

We affirm the juvenile court’s jurisdiction finding and
disposition order.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.